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Judge orders compensation, reclassification for immigration court interpreters

By Nina Agrawal

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Patricia Rivadeneira, an interpreter in immigration court, lost her job in 2016 after organizing for better pay. A National Labor Relations Board judge ruled Monday that she be reinstated and given back pay. (Christina House / Los Angeles Times)

The company that provides the vast majority of interpreters in immigration courts nationwide illegally retaliated against some of them for organizing and must offer them reinstatement and back pay, a judge for the National Labor Relations Board ruled Monday.

SOS International, which is under contract with the Department of Justice to provide immigration court interpreters, misclassified those interpreters as contractors instead of employees and violated the National Labor Relations Act by terminating interpreters who organized, said administrative law judge Michael A. Rosas in Washington, D.C.

Rosas ordered the company, also known as SOSi, to offer workers who suffered retaliation full reinstatement and back pay, and to reclassify its interpreters who work in immigration courts as employees.

"I'm very happy. I was crying for hours," said Patricia Rivadeneira, one of the interpreters who lost her job after organizing.

In a statement, the company said it disagreed with the judge's decision and planned to appeal.

"We follow industry practice of drawing from a large number of independent, sub-contracted interpreters to meet our DOJ contract requirements," the statement said. "We continue to feel that our position is consistent with past legal precedent and that the contractual arrangements

between the contracted interpreters and SOSi remain consistent with the mutual intent of both parties."

A spokeswoman for the Justice Department said the Executive Office for Immigration Review, which oversees immigration courts, does not comment on federal agency decisions.

The judge's ruling, if upheld, will affect hundreds of interpreters who have been contracted by SOSi to work in immigration courts across the country. Those courts are facing a growing backlog of nearly 700,000 cases. The majority of the cases are conducted in a language other than English, and their outcomes can sometimes hinge on accurate interpretation.

The order also comes at a time of debate about the use of independent contractors in many sectors of the economy, from truckers at the ports of Los Angeles and Long Beach to ride-hailing drivers.

"This is an important issue nationwide," said attorney Lorrie Bradley, who represented the interpreters' union and whose firm primarily handles labor cases. "Misclassification is one of those things that happens everywhere, literally from high tech to agriculture."

The interpreters' case stems from a series of disputes between the interpreters and SOSi dating back to 2015, when the company was first awarded the Justice Department contract and offered some longtime interpreters a wage of \$35 an hour — significantly lower than what they had previously earned. That didn't include payment for time spent traveling between assignments or waiting in line at courthouses, compensation for parking or other work-related expenses, or any minimum guarantee of hours.

Many interpreters, including Rivadeneira, balked and instead organized to negotiate a higher rate. They were ultimately successful, securing rates of \$225 for a half-day and \$425 for a full day, plus additional compensation for travel cases. But the company later refused to renew their contracts, an action that formed the basis of charges they filed with the labor board.

After investigating those charges, the board filed a formal complaint against SOSi last spring. A trial was held in Los Angeles and Washington in September.

In Rosas' decision, he said the "overriding issue" was the interpreters' status as employees or independent contractors.

The distinction determines whether workers receive certain protections and benefits from their employers — such as being able to organize and seek remedy from discrimination, receive workers' compensation, and be paid minimum wage and overtime.

After considering the extent of control that SOSi maintains over the interpreters' working conditions, Rosas found that they are indeed employees. For example, he wrote, the SOSi interpreters wear company-branded name badges, are prevented from soliciting outside business and conduct an essential part of the company's business. They also have little choice but to accept the assignments and rates that SOSi offers.

Rosas ordered SOSi to reinstate six of the eight interpreters named in the case and to compensate them for any loss of earnings and other benefits. (He did not conclude that the other two interpreters had been unfairly let go.) He also ordered the company to post notices of the interpreters' rights to organize.

For Rivadeneira, who started working in immigration court in 2002, the day she returns to work can't come soon enough. Since her contract with SOSi was terminated by the company in 2016, she and her husband have had to rely on his Social Security check and on their adult son, who moved in with them and pays for almost everything besides the rent.

Going back to work will mean a return to independence, Rivadeneira said. It's also a matter of pride.

"I love my work," Rivadeneira said. "I love my job and I do it well."

nina.agrawal@latimes.com

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